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16 MOSAIC TILE SUPPLIES, LLC

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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20

21 SUNSET MOUNTAINS, INC., d/b/a MOSAIC
22 TILE MARKET. a California corporation,

23 Plaintiff,

24 v.

25 MOSAIC TILE SUPPLIES, LLC, a Texas
limited liability company,

26 Defendant.
27
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Civil Action No. C 07 4007 (PJH)

JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER

Conference Date: December 13, 2007
Time: 2:30 p.m.
Courtroom: 3

1 Pursuant to this Court's Standing Order and, the Federal Rules of Civil Procedure, the parties
2 jointly submit this Case Management Statement and Proposed Order following a meet and confer on
3 Wednesday, December 5, 2007 among Judith M. Schvimmer, for the Plaintiff and Counterclaim
4 Defendant Sunset Mountains, Inc. d/b/a Mosaic Tile Market ("Mosaic"), and Donald E. Morris and
5 Nicholas T. Moraites, for the Defendant and Counterclaimant Mosaic Tile Supplies, LLC ("MTS").
6 Each party certifies that its lead trial counsel who will try this case met and conferred for the
7 preparation of this Statement.
8

9 The parties make the following representations and recommendations:

10 A. JOINT STATEMENT OF FACTS AND EVENTS UNDERLYING THE ACTION
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12 The parties entered into a business relationship in 2003. Plaintiff, an operator of an online tile
13 showroom and store, contends that this relationship was purely that of a reseller, in which the Plaintiff
14 resold the Defendant's products. Defendant, an online source for glass, stainless steel, and porcelain
15 mosaic tiles, alleges that this relationship was that of an exclusive distributorship, whereby Plaintiff
16 was to sell only Defendant's products on its website and not compete with the Defendant.
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18 In late 2006, the Defendant contends that Plaintiff violated the terms of an alleged agreement
19 between the parties. Plaintiff denies that there was any such agreement or that it violated any of the
20 terms of such agreement. The parties agreed to end the business relationship under specific terms
21 which are, in part, in dispute.

22 Defendant contends that the Plaintiff infringed on Defendant's trademarks during this period.
23 Plaintiff denies any such violation. There continues to be a dispute between the parties regarding the
24 nature of the relationship and use of Defendant's intellectual property.

25 Plaintiff alleged in its First Amended Complaint for a Declaratory Judgment that Defendant
26 misused its copyrights, committed acts of unfair competition, and tortiously interfered with
27 prospective business relationships. Defendant has denied these claims and filed a Counterclaim
28

1 alleging trademark infringement, tortious interference of prospective business relations,
2 misappropriation of trade secrets, unfair competition, and breach of contract.

3 B. PRINCIPAL ISSUES

4 1. The principal factual issues that the parties dispute are:

- 5 a. the nature of the parties' business relationship
6 b. the terms of the parties' termination of their business relationship
7 b. the extent of the parties' respective intellectual property rights

8 2. The principal legal issues that the parties dispute are:

- 9 a. the extent of MTS's trademark rights and whether those rights have been
10 infringed through Mosaic's marketing and sale of MTS products;
11 b. the extent of MTS's copyright rights and whether those rights have been
12 infringed through Mosaic's marketing and sale of MTS products and
13 whether those rights were misrepresented in connection with MTS's DMCA
14 Take Down Notice;
15 c. the legal relationship between the parties, including whether Mosaic was a
16 licensee of MTS and whether Mosaic was an exclusive distributor of MTS;
17 d. the legal obligations connected to the resale of another manufacturer's
18 product;
19 e. the existence of any trade secret protection for the parties' respective
20 business information;
21 f. whether either party intentionally misled the other or made knowingly false
22 representations;
23 g. whether the parties competed unfairly;
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h. whether either party intentionally interfered with the other's business relationships with third parties;

3. The following issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue remain unresolved:

Neither party believes there are any such issues.

4. The following parties have not yet been served:

None at this time

5. Any additional parties that a party intends to join are listed below:

None at this time

6. Any additional claims that a party intends to add are listed below:

None at this time.

C. ALTERNATIVE DISPUTE RESOLUTION

The parties agree to mediation of the litigation and aim to hold a mediation session before April 15, 2008.

D. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE

Neither party consents to a trial presided over by a Magistrate Judge.

E. DISCLOSURES

The parties certify that on or before the December 27, 2007 deadline, they will have made the following disclosures in a Rule 26(f) report:

1. Persons to be disclosed pursuant to Rule 26
2. Categories of documents disclosed under Rule 26 or produced through formal discovery
3. A preliminary analysis of the damages or of the offset

4. Neither party has any relevant insurance policies as defined by Fed. R. Civ. P. 26(a)(1)(D)

5. The parties will disclose the following additional information by the date listed:

None at this time

Disclosures as required by Fed. R. Civ. P. 26(e) will be supplemented at the following intervals: At three-month intervals.

F. EARLY FILING OF MOTIONS

The following motions expected to have a significant effect either on the scope of discovery or other aspects of the litigation shall be heard by the date specified below:

At this time the parties anticipate that there will be motions for summary judgment.

G. DISCOVERY

1. The parties have conducted or have underway the following discovery:

None.

2. The parties have negotiated the following discovery plan:

Only the limitations set forth below.

3. Limitations on discovery tools:

a. depositions (excluding experts) by:

Plaintiff: 10

Defendant: 10

b. interrogatories served by:

Plaintiff: 25

Defendant: 25

c. document production requests served by:

Plaintiff: 70

Defendant: 70

d. requests for admission served by:

Plaintiff: 40

Defendant: 40

4. The parties agree to the following limitations on the subject matter of discovery:
As set forth in the applicable Federal Rules.
5. Discovery from experts. The parties tentatively plan to offer expert testimony as to the following subject matter(s):
Resale rights, particularly with regard to use of manufacturer's and reseller's respective trademarks on resale of product
Economic damages
Legal relationship between the parties
Whether MTS misrepresented its copyrights in connection with its service of a DMCA Take Down Notice
6. The Court orders the following additional limitations on the subject matter of discovery:
7. Deadlines for disclosure of witnesses and completion of discovery:
 - a. completion of all discovery except from experts:
120 days before trial
 - b. disclosure of identities, resumes, final reports and all other matters required by Fed. R. Civ. P. 26(a)(2):
90 days before trial
Rebuttal reports: two weeks subsequent to the disclosure date above
 - c. completion of discovery from experts: 90 days before trial

H. ADDITIONAL TOPICS SET FORTH IN F.R.C.P. 26(F)

1. Electronic Discovery:
The parties agree to produce any electronically stored documents in a manner which meets the Federal requirement of producing electronic data in reasonably useable form. The

parties further agree to limit requests for metadata to five individuals but reserve the right to seek metadata from additional individuals as needed.

2. Privilege:

The parties agree that a two-tiered protective order should be entered governing the handling of confidential material. The parties will work towards a proposed protective order.

I. PRETRIAL AND TRIAL SCHEDULE

1. Trial date: February 9, 2009
2. Anticipated length of trial (number of days): 4 days
3. Type of trial: X jury court
4. Final pretrial conference date: January 26, 2009
5. Deadline to hear motions directed to the merits of all or part of the case: 60 days prior to the trial date

J. DATE OF NEXT CASE MANAGEMENT/STATUS CONFERENCE

K. OTHER MATTERS

None at this time

L. IDENTIFICATION AND SIGNATURE OF LEAD TRIAL COUNSEL

Dated: December 6, 2007

By 

Paul W. Vapnek
Judith M. Schvimmer
Attorneys for Plaintiff and Counterclaim Defendant
SUNSET MOUNTAINS, INC., d/b/a MOSAIC TILE
MARKET

Dated: December 6, 2007

By 

John W. Dozier, Jr.
Donald E. Morris
Darrin Holender
Attorneys for Defendant and Counterclaimant
MOSAIC TILE SUPPLIES, LLC

1 The court finds that each party was represented by lead trial counsel responsible for trial of this
2 matter and was given an opportunity to be heard as to all matters encompassed by this Case
3 Management Statement and Proposed Order filed prior to this conference. The court adopts this
4 statement as modified.

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6 The foregoing joint statement as amended is adopted by this court as the Case Management
7 Order in this action.

8 The Court makes the following additional orders:
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11 IT IS SO ORDERED.
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13 Dated: _____

Honorable Phyllis J. Hamilton,
UNITED STATES DISTRICT JUDGE

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